

PAYMENTS—EDUCATIONAL ASSISTANCE

§ 21.7130 Educational assistance.

VA will pay educational assistance to an eligible veteran or servicemember while he or she is pursuing approved courses in a program of education at the rates specified in §§ 21.7136, 21.7137 and 21.7139 of this part.

(Authority: 38 U.S.C. 3015, 3022, 3032; Pub. L. 98–525)

§ 21.7131 Commencing dates.

The commencing date of an award or increased award of educational assistance will be determined under this section.

(a) *Entrance or reentrance including change of program, training time, or educational institution.* When an eligible veteran or servicemember enters or re-enters into training, the commencing date of his or her award of educational assistance shall be the latest of the following dates.

(1) The date the educational institution certifies under paragraph (b) or (c) of this section.

(2) The date one year before VA receives the veteran's or servicemember's application or enrollment certification, whichever is the later. (See § 21.7032 of this part)

(3) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(4) The date of reopened application under paragraph (d) of this section.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672; Pub. L. 98–525)

(b) *Certification by school—the course or subject leads to a standard college degree.* (1) When the student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.

(2) Except as provided in paragraphs (b)(3), (b)(4) and (b)(5) of this section when a student enrolls in a resident course or subject, the commencing date of the award or increased award of educational assistance will be the first scheduled date of classes for the term,

quarter or semester in which the student is enrolled.

(3) When the student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course or subject.

(4) When a student enrolls in a resident course or subject, the commencing date of the award will be the date of reporting provided that—

(i) The published standards of the school require the student to register before reporting, and

(ii) The published standards of the school require the student to report no more than 14 days before the first scheduled date of classes for the term, quarter or semester for which the student has registered.

(5) When the student enrolls in a resident course or subject and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or the increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3014, 3023; Pub. L. 98–525)

(c) *Certification by educational institution or training establishment—course does not lead to a standard college degree.*

(1) When a veteran or servicemember enrolls in a course which does not lead to a standard college degree and which is offered in residence, the commencing date of the award of educational assistance will be as stated in paragraph (b) of this section.

(2) When a veteran or servicemember enrolls in a course which is offered by correspondence, the commencing date of the award of educational assistance shall be the later of—

(i) The date the first lesson was sent, or

(ii) The date of affirmance.

(3) When a veteran enrolls in a program of apprenticeship or other on-the-job training, the commencing date of the award of educational assistance

Department of Veterans Affairs

§ 21.7131

shall be the first date of employment in the training position.

(Authority: 38 U.S.C. 3014, 3023; Pub. L. 98-525, Pub. L. 99-576)

(d) *Reopened application after abandonment (§21.7032)*. When the veteran or servicemember reopens his or her claim after abandoning it, the commencing date of the award of educational assistance shall be the date VA receives the individual's application or enrollment certificate, whichever is later.

(Authority: 38 U.S.C. 3034, 3471(a); Pub. L. 98-525)

(e) *Increase for a dependent*. A veteran who was eligible for educational assistance allowance under 38 U.S.C. chapter 34 on December 31, 1989, is entitled to additional educational assistance for dependents. No other veteran or servicemember is eligible for additional educational assistance. The effective date for the additional educational assistance is determined as follows.

(1) The veteran may acquire one or more dependents before he or she enters or reenters a program of education. When this occurs, the following rules apply.

(i) The effective date of the increase will be the date of entrance or reentrance if—

(A) VA receives the claim for the increase within 1 year of the date of entrance or reentrance, and

(B) VA receives necessary evidence within 1 year of its request, or the veteran shows that good cause exists for VA's not receiving the necessary evidence within 1 year of its request. See §21.7032.

(ii) The effective date of the increase will be the date the VA receives notice of the dependent's existence if—

(A) VA receives the claim for the increase more than 1 year after the date of entrance or reentrance, and

(B) VA receives notice of the dependent's existence if evidence is received either within 1 year of VA request, or the veteran shows that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(iii) The effective date will be the date VA receives all necessary evi-

dence, if that evidence is received more than 1 year from the date VA requests it, unless the veteran is able to show that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence. If the veteran shows good cause, the provisions of subdivision (ii)(B) of this subparagraph will apply.

(2) If the veteran acquires a dependent after he or she enters or reenters a program of education, the increase will be effective on the latest of the following dates:

(i) Date of claim. This term means the following in order of their applicability:

(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year of the event.

(B) Date notice is received of the dependent's existence if evidence is received either within 1 year of the VA request, or the veteran shows that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(C) The date VA receives evidence if this date is more than 1 year after the VA request, and the veteran is not able to show that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(Authority: 38 U.S.C. 5110(n))

(See §3.667 of this chapter as to effective dates with regard to children age 18 and older who are attending school)

(f) *Liberalizing laws and VA issues*. When a liberalizing law or VA issue affects the commencing date of a veteran's or servicemember's award of educational assistance, that commencing date shall be in accordance with facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)

(g) *Correction of military records (§21.7050(b))*. The eligibility of a veteran may arise because the nature of the veteran's discharge or release is

changed by appropriate military authority. In these cases the commencing date of educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C. 3031(b); Pub. L. 98–525)

(h) *Individuals in a penal institution.* If a veteran or servicemember is paid a reduced rate of educational assistance under § 21.7139 (c), (d), (e), (f) and (g) of this part, the rate will be increased or assistance will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program or a State or local program, or

(2) The date of the release from the prison or jail.

(Authority: 38 U.S.C. 3034, 3482(g); Pub. L. 98–525)

(i) *Commitment to service in the Selected Reserve.* If a veteran has established eligibility to educational assistance through two years' active duty service, and he or she establishes entitlement to an increased monthly rate through commitment to serve four years in the Selected Reserve, the effective date of the increase is the date on which he or she—

(1) Is committed to serve four years in the Selective Reserve, and

(2) Is attached to a unit of the Selected Reserve.

(Authority: 38 U.S.C. 3012; Pub. L. 98–525)

(j) *Service Members Occupational Conversion and Training Act of 1992.* If the veteran's educational assistance has been discontinued because the veteran is training under a job training program for which benefits are payable to his or her employer under the Service Members Occupational Conversion and Training Act of 1992, VA will determine the date upon which educational assistance may be resumed as follows.

(1) When the veteran is pursuing a program of education on the last date for which benefits are payable under that Act, payments will be resumed on the day following that date.

(2) When the veteran is not pursuing a program of education on the last date for which benefits are payable under that Act, payments will be resumed on

the commencing date as determined by paragraphs (a) through (i) of this section, but not before the day following the last date for which benefits are payable under that Act.

(Authority: Sec. 4492(a), Pub. L. 102–484, 106 Stat. 2765–2766)

(k) *Increase ("kicker") due to service in the Selected Reserve.* If a veteran is entitled to an increase ("kicker") in the monthly rate of basic educational assistance because he or she has met the requirements of § 21.7136(g) or § 21.7137(e), the effective date of that increase ("kicker") will be the latest of the following dates:

(1) The commencing date of the veteran's award as determined by paragraphs (a) through (j) of this section;

(2) The first date on which the veteran is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned; or

(3) February 10, 1996.

(Authority: 10 U.S.C. 16131)

(l)–(m) [Reserved]

(n) *Eligibility established under § 21.7045(c).* The effective date of an award of educational assistance when the veteran has established eligibility under § 21.7045(c) is as follows:

(1) If the veteran is not entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following.

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) October 23, 1992, provided that VA received the \$1,200 required to be collected pursuant to § 21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) October 23, 1993; or

(B) One year from the date VA requested the \$1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the \$1,200 required to be collected pursuant to § 21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(1)(ii) of this section are not met.

Department of Veterans Affairs

§ 21.7135

(2) If the veteran is entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following:

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) The date on which the veteran made a valid election to receive educational assistance under 38 U.S.C. chapter 30 provided that VA received the \$1,200 required to be collected pursuant to §21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) One year from the date VA received the valid election; or

(B) One year from the date VA requested the \$1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the \$1,200 required to be collected pursuant to §21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(2)(ii) of this section are not met.

(Authority: 38 U.S.C. 3018B)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28386, July 11, 1990; 56 FR 11672, Mar. 20, 1991; 57 FR 40615, Sept. 4, 1992; 61 FR 6788, Feb. 22, 1996; 62 FR 55519, Oct. 27, 1997; 63 FR 34132, June 23, 1998]

EFFECTIVE DATE NOTE: At 63 FR 34132, June 23, 1998, §21.7131 was amended by reserving paragraphs (l) and (m) and adding paragraph (n), effective July 23, 1998.

§21.7133 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034, 3690)

[63 FR 35837, July 1, 1998]

EFFECTIVE DATE NOTE: At 63 FR 35837, July 1, 1998, §21.7133 was revised, effective July 31, 1998. For the convenience of the user, the superseded text is set forth as follows:

§21.7133 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance, and in such cases VA will apply §§21.4133, 21.4134 and 21.4207 of

this part in the same manner as they are applied in the administration of chapters 34 and 36.

(Authority: 38 U.S.C. 3034, 3690; Pub. L. 98-525)

§21.7135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance will be as stated in this section. Reference to reduction of educational assistance due to the loss of a dependent only applies to veterans who were eligible to receive educational assistance allowance under 38 U.S.C. chapter 34 on December 31, 1989. No other veteran or servicemember will have his or her educational assistance reduced due to a loss of a dependent. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of veteran or servicemember.*

(1) If the veteran or servicemember receives an advance payment pursuant to 38 U.S.C. 3680(d) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(2) In all other cases if the veteran or servicemember dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.

(Authority: 38 U.S.C. 3014, 3023, 3680)

(b) *Death of dependent.* When a veteran's dependent dies, and the veteran has been receiving additional educational assistance based on the dependent, the effective date of reduction of the veteran's educational assistance shall be the last day of the month in which the death occurs.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)

(c) *Divorce.* If the veteran becomes divorced, the effective date of reduction of his or her educational assistance is the last day of the month in which the divorce occurs.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)

(d) *Dependent child.* If the veteran's award of educational assistance must be reduced because his or her dependent child ceases to be dependent, the